IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1050 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIPAKKUMAR C VYAS - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR NILESH M SHAH for Petitioner(s) : 1,MR MAYANK DESAI for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/12/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order directing the respondents to regularize the appointment of the petitioner and grant him permanent post of peon from the

date of his first representation.

2. It is case on behalf of the petitioner that since September 1987, he was working with the respondents as part time Sweeper in the office of the Deputy Engineer Express Way Bridge Department, No.14, Vadodara. It is submitted that in spite of the Government notifications and the circulars from time to time for conversion of part time employees into regular posts, the respondent authorities have been depriving the petitioner of such conversion. The petitioner has relied upon the notification of the State Government dated 25th September 1979 and relied upon clauses (b) and (c) of Rule 3. He has submitted that his services are required to be regularized and he should be appointed on permanent post. He has submitted that after about four years of his ad hod tenure, as his services were not regularized in accordance with the aforesaid notification, he preferred Special Civil Application No.12110 of 1994 and the said Special Civil Application came to be disposed of by this Court vide order dated 1-2-1996 directing the respondents to consider the representation of the petitioner. By communication dated 26th March 1996, he was communicated by the respondents that his services cannot be regularized as he is not falling within the eligibility

criteria stipulated by the rules in the notification and thereafter, again he has made representations, which were rejected and therefore, it is requested to allow the present Special Civil Application as the petitioner's services are required to be regularized by further submitting that according to his information, in the office of Baroda Express Highway, Division No.5, one post of watchman was vacant since the watchman who was working has retired. Therefore, it is requested to allow the present Special Civil Application.

3. The petition is opposed by the respondents. The affidavit-in-reply is also filed. It is submitted that as the appointment of the petitioner was on purely temporary part time basis and his appointment was neither drawn from the Employment Exchange at the time of initial assignment of work and/or screen as per Recruitment Rules and therefore, he cannot claim for regularization as his initial appointment itself is illegal. Even, otherwise, it is submitted that merely because, the petitioner has worked on part time post temporarily, his services are not required to be regularized and that the Government notification dated 25th September 1979 upon which reliance has been placed is not applicable and/or he is not verifying the requisite criteria of the said notification

and therefore, it is requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing on behalf of the parties.

5. It is not in dispute that the initial appointment of the petitioner was a part time sweeper. It is not the case of the petitioner that his initial appointment was after following due procedure of selection known to law and/or after calling upon the names from the Employment Exchange. Merely because, the petitioner has worked for many years on part time basis, it does not confer any right in favour of the petitioner to claim for regularization. The initial appointment of the petitioner itself is illegal. Under the circumstances, the prayer of the petitioner to regularize his services and to appoint him on permanent basis cannot be accepted. If such a prayer is accepted, it will cause injustice to other persons, who are waiting for the appointments in accordance with law and who are in the queue in the Employment Exchange. To grant such a relief would be discriminatory and violative under Article 14 of the Constitution of India. Merely because some vacant post is there, straightway the petitioner is not to be appointed

on that post and/or is not to be appointed for permanent basis. The Hon'ble Supreme Court in catena of judgments has deprecated such a practice of regularizing the services of those persons whose initial appointments are illegal and/or dehors the rules and regulations. Under the circumstances, the prayer of the petitioner cannot be accepted.

6. So far as the notification relied upon by the petitioner is concerned, it is not appreciable how the said notification would be helpful to the petitioner for regularization of his services. The said resolution provides for eligibility criteria for appointment by direct selection to the post and the same is not related to making a part timer permanent and/or to regularize his services. Under the circumstances, the reliance placed upon such resolution is misplaced and the petitioner is not entitled to any relief on the basis of the said resolution.

7. For the reasons stated above, the petition fails. Rule discharged. No costs.

(M.R.SHAH,J.)

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